IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1237 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF INDIA

Versus

X X X

Appearance:

1. Civil Revision Application No. 1237 of 2002

MR JT TRIVEDI for Petitioner No. 1

MR BJ TRIVEDI for Petitioner No. 1

..... for Respondent No. 1-2

SERVED BY RPAD - (R) for Respondent No. 2/1

RULE SERVED for Respondent No. 2/2-2/4

UNSERVED-EXPIRED (R) for Respondent No. 2/5-2/3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/02/2004

ORAL JUDGEMENT

1. As per the endorsement of the office, respondent no. 2/5 is reported dead. Hence, respondent no. 2/5 stands deleted from the cause title of the present Civil Revision Application.

2. Present Civil Revision Application is filed by the original plaintiff of Special Civil Suit No. 207 of 1989.

3. It is stated by the learned advocate Mr. Trivedi for the petitioner that the application exh. 68 was preferred by the original plaintiff on the ground that original defendant no. 2 - Jetha Mepa has died and his heirs were required to be brought on the record and hence the said application should have been allowed. The trial Judge, by the impugned order, has rejected the said application on the ground that the application is filed at a belated stage and for considerable time the plaintiff has not taken any steps to bring on record the heirs of the deceased defendant no. 2. On the ground of delay caused in filing the application for bringing on record the heirs of deceased defendant no. 2, the said application exh. 68 is rejected by the trial Court by the order dated 19-3-2001, which is impugned in the present Civil Revision Application.

4. Mr. Trivedi submitted that, originally, the aforesaid Special Civil Suit was filed in the year 1989 before the Civil Judge (SD), Jamnagar which was subsequently transferred to the Court at Khambhalia, Dist. Jamnagar. Mr. Trivedi also submitted that the fact about death of the original defendant no. 2 came to the notice of the petitioner in March 2000 and he immediately submitted an application for bringing heirs of the defendant no. 2 on the record of the case.

5. Mr. Trivedi submitted that the aforesaid suit is filed by the Bank for recovery of its dues and it is public money which is involved and it is a question of public money for which the said suit is filed.

6. Since nobody has appeared for the other side this Civil Revision Application is required to be decided on the basis of the arguments advanced by the learned advocates for the petitioner as well as considering the order passed by the trial Court. It is no doubt true that the petitioner - original plaintiff has not given any separate application for condonation of delay caused

in filing the application exh. 68 for bringing on record the heirs and legal representatives of the deceased defendant no. 2. It is submitted by Mr. Trivedi that since the suit proceedings were transferred from one court to another court the fact about death of the original defendant no. 2 was not within the knowledge of the Bank's Officers. Mr. Trivedi also submitted that it is the duty of the advocate of the original defendant no.2 to point out the said fact by bringing the same to the notice of the bank or its officers. Mr. Trivedi further submitted that after obtaining the death certificate on 8-3-2000 the application for condonation of delay caused in filing the application exh.68 was filed on that very day.

7. Looking to the application drafted by the applicant, in my view, it can safely be said that it is drafted in a very casual manner. However, in order to see that the suit of the Bank may not fail only on this technical ground and also considering the fact that initially the original suit was filed in one court and subsequently, it was transferred to another court, the application exh. 68 submitted by the petitioner - Bank is required to be allowed. It is also presumed that the respondents are not opposing this Civil Revision Application as they have not chosen to appear in the present Civil Revision Application.

8. Accordingly, the application exh. 68 submitted by the petitioner - Bank before the trial Court is allowed and the heirs and legal representatives of the deceased defendant no.2 are permitted to be brought on record of the case except the respondent no. 2/5 herein, who is reported to be dead as per the report of the office. The impugned order dated 19-3-2003 passed by the trial Court below the application exh. 68 in Special Civil Application No. 207 of 1989 is quashed and set aside.

9. After the cause title of the plaint is amended, the trial Court shall proceed with the suit and dispose of the same in accordance with law as expeditiously as possible.

10. The registry of this Court shall send writ of this order to the trial Court forthwith and copy of the writ of this order is permitted to be given to the learned advocate for the petitioner for submitting the same before the trial Court.

11. Accordingly, this Civil Revision Application is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B. Majmudar, J.)

/JVSatwara/